

AMENDED IN SENATE APRIL 18, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 721

Introduced by Senator Chesbro

February 22, 2005

An act to amend Section 9092 of the Elections Code, and to amend Section 88006 of the Government Code, relating to ballot pamphlets.

LEGISLATIVE COUNSEL'S DIGEST

SB 721, as amended, Chesbro. Elections: ballot pamphlets.

Existing law provides that any elector may challenge copy for the ballot pamphlet for statewide elections by showing, upon clear and convincing proof, that the copy is false, misleading, or inconsistent with specified statutory law, and that the issuance of a writ of mandate to amend or delete copy will not substantially interfere with the printing and distribution of the ballot pamphlet.

This bill would codify the requirements of existing law that, in ruling on a challenge to ballot pamphlet copy, a court indulge all legitimate presumptions in favor of the propriety of the copy, and find the copy sufficient in cases where reasonable minds could differ as to the sufficiency of the copy. The bill would further state, with regard to a ruling on any challenge to ballot pamphlet copy as to the Legislative Analyst's analysis of a ballot measure, that the primary purposes of that analysis are specified criteria set forth in existing law.

~~This bill would define the term "clear and convincing proof," for this purpose, in a manner consistent with existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 9092 of the Elections Code is amended to read:

9092. (a) Not less than 20 days before he or she submits the copy for the ballot pamphlet to the State Printer, the Secretary of State shall make the copy available for public examination. Any elector may seek a writ of mandate requiring copy to be amended or deleted from the ballot pamphlet.

(b) A peremptory writ of mandate shall issue only pursuant to all of the following:

(1) Upon clear and convincing proof that the copy in question is false, misleading, or inconsistent with the requirements of this code or Chapter 8 (commencing with Section 88000) of Title 9 of the Government Code.

(2) Upon clear and convincing proof that issuance of the writ will not substantially interfere with the printing and distribution of the ballot pamphlet as required by law.

(3) After all legitimate presumptions have been indulged in favor of the propriety of the copy. Where reasonable minds may differ as to the sufficiency of any ballot pamphlet copy, the copy shall be found sufficient.

(c) For purposes of applying the criteria set forth in subdivision (b) to the analysis prepared by the Legislative Analyst of any measure, the primary purposes of that analysis, in accordance with Section 9087 of this code and Section 88003 of the Government Code, are that it be written in clear and concise terms easily understandable by the average voter, and that it generally set forth the information needed by the average voter to understand the measure adequately.

(d) Venue for a proceeding under this section shall be exclusively in Sacramento County. The Secretary of State shall be named as the respondent and the State Printer and the person or official who authored the copy in question shall be named as real parties in interest. If the proceeding is initiated by the Secretary of State, the State Printer shall be named as the respondent.

~~(e) For purposes of this section, "clear and convincing proof" means proof that is sufficiently strong to command the unhesitating assent of every reasonable mind.~~

SEC. 2. Section 88006 of the Government Code is amended to read:

88006. (a) Not less than 20 days before he or she submits the copy for the ballot pamphlet to the State Printer, the Secretary of State shall make copy available for public examination. Any elector may seek a writ of mandate requiring the copy to be amended or deleted from the ballot pamphlet.

(b) A peremptory writ of mandate shall issue only pursuant to all of the following:

(1) Upon clear and convincing proof that the copy in question is false, misleading, or inconsistent with the requirements of this chapter or the Elections Code.

(2) Upon clear and convincing proof that issuance of the writ will not substantially interfere with the printing and distribution of the ballot pamphlet as required by law.

(3) After all legitimate presumptions have been indulged in favor of the propriety of the copy. Where reasonable minds may differ as to the sufficiency of any ballot pamphlet copy, the copy shall be found sufficient.

(c) For purposes of applying the criteria set forth in subdivision (b) to the analysis prepared by the Legislative Analyst of any measure, the primary purposes of that analysis, in accordance with Section 9087 of this code and Section 88003 of the Government Code, are that it be written in clear and concise terms easily understandable by the average voter, and that it generally set forth the information needed by the average voter to understand the measure adequately.

(d) Venue for a proceeding under this section shall be exclusively in Sacramento County. The Secretary of State shall be named as the respondent and the State Printer and the person or official who authored the copy in question shall be named as real parties in interest. If the proceeding is initiated by the Secretary of State, the State Printer shall be named as the respondent.

~~(e) For purposes of this section, "clear and convincing proof" means proof that is sufficiently strong to command the unhesitating assent of every reasonable mind.~~

SEC. 3. It is the intent of the Legislature in enacting the provisions of Sections 1 and 2 of this act to construe and clarify the meaning and effect of existing law, and to add information to

- 1 the ballot pamphlet in accordance with Section 9093 of the
- 2 Elections Code and Section 88007 of the Government Code.

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